

INITIAL STATEMENT OF REASONS

SECTION 22610.1. DEFINITIONS.

1. SPECIFIC PURPOSE OF THE REGULATION.

The proposed regulation defines "health care provider," "the public guardian," "the legal representative of the registrant," and "other authorized persons" as used in Probate Code sections 4800 and 4801. Under Probate Code section 4800, any "health care provider," "the public guardian," and "the legal representative of the registrant"; are the persons who are entitled to receive information or copies of written advance health care directives maintained in the Registry required to be established by the Secretary of State's Office. Under Probate Code section 4801, the Secretary of State is required to establish procedures to verify the identities of "health care providers," "the public guardian," and "other authorized persons." The proposed regulation is intended to clarify, among other things, that "health care provider," "the public guardian," "the legal representative of the registrant," and "other authorized persons" need not be domiciled in California. This would allow non-Californians, if otherwise authorized to receive the information, to access the Registry to obtain health-decision information regarding Californians who are traveling outside of California, should the need for the information arise.

2. NECESSITY.

Unless the meaning of "health care provider," "the public guardian," "legal representative of registrant," and "other authorized persons," as these terms are used in Probate Code sections 4800 and 4801 are defined, registrants, Secretary of State staff, and interested members of the public will not know who is authorized to have access to registration information on file with the Secretary of State. Absent this regulation, non-California "health care providers," "public guardians" and "legal representatives of registrants" may be unable to obtain vital health-decision information regarding Californians who are traveling outside of California, should the need for the information arise. For example, suppose Mary is a resident of Sacramento, California. She registers her written advance health care directive with the California Secretary of State's Office. She thereafter becomes unconscious following a traffic accident in Reno, Nevada. Without this regulation, her doctor at a hospital in Reno, Nevada, may be unable to obtain information from the California Secretary of State's Office regarding her written advance health care directive or its location. Denying access to this information to Mary's doctor in Reno, Nevada, in this circumstance, would be inconsistent with the legislative finding as declared in Probate Code section 4650. Probate Code section 4650 provides, in part, that the Legislature finds ". . . that an adult has the fundamental right to control the decisions relating to his or her own health care, including the decision to have life-sustaining treatment withheld or withdrawn."

3. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

In drafting the proposed regulation, Secretary of State staff considered the language of the statute (Probate Code sections 4800-4805) and the statute's legislative history. (http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1857&sess=9394&house=B&author=senator_watson; http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_891&sess=9900&house=B&author=alquist; http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_2401-2450/ab_2445_bill_20040929_chaptered.html).

In addition, Secretary of State staff reviewed advance health care directive registry programs in the states of Arizona (http://www.azsos.gov/adv_dir/), Louisiana (<http://www.sos.louisiana.gov/pubs/pubs-index.htm#Programs>), Montana (<http://data.opi.state.mt.us/bills/2005/billhtml/HB0742.htm>, and <http://www.doj.state.mt.us/news/releases2005/04282005.asp>), North Carolina (<http://www.secretary.state.nc.us/ahcdr/>) and Vermont (<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT055.HTM> and

<http://www.timesargus.com/apps/pbcs.dll/article?AID=/20050901/NEWS/509010334/1003/NEWS02>). (See, also, Vermont Department of Health study referenced below.)

Secretary of State staff reviewed programs established by U.S. Living Will Registry in New Jersey (<http://www.uslivingwillregistry.com/>) and Choices Bank in Montana (<http://www.choicesbank.org/>), both private organizations.

Secretary of State staff also reviewed a report prepared by the Vermont Department of Health, dated January 15, 2005 (<http://www.healthyvermonters.info/admin/pubs/AdvanceDirectiveRpt.pdf>), regarding similar registries.

Finally, Secretary of State staff reviewed reports of the California Law Revision Commission regarding laws concerning advance health care directives. (<http://clrc.ca.gov/pub/Printed-Reports/Pub201-HCDL.pdf>; <http://www.clrc.ca.gov/pub/Printed-Reports/Pub208-2000HCDL-PAL.pdf>; <http://www.clrc.ca.gov/pub/Printed-Reports/Pub209-2000-01Recs.pdf> .)

(Website addresses were current as of December 27, 2005.)

4. REASONABLE ALTERNATIVES TO THE REGULATION AND THE OFFICE'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives have been presented to or considered by the Secretary of State's Office. Definitions of critical terms are needed if the Secretary of State's Office is to carry out its obligations under the statute. Otherwise, registrants, Secretary of State staff and interested members of the public will not know who has access to the Registry information.

5. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL OR OTHER BUSINESSES.

The Office has not identified any adverse impact that the regulatory action would have on small business. To the extent that the regulatory action proposed may facilitate utilization of the Registry, health care providers and their patients may be benefited.

6. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

Facilitating access to the Registry by health care providers and others by clarifying who has authority to do so will likely benefit health care providers and others. No adverse economic impact has been identified.

SECTION 22610.2. REGISTRATIONS.

1. SPECIFIC PURPOSE OF THE REGULATION.

Proposed regulation subdivision (a) of Section 22610.2 requires that the Secretary of State's Office prescribe the form for registering written advance health care directives. This is important to help ensure that the information permitted to be received and released by the Secretary of State's Office pursuant to Probate Code section 4800 is provided by registrants. It also facilitates the processing of registrations received and expedites the availability of the information to those authorized to receive it. In addition, it minimizes processing errors.

Proposed regulation subdivision (b) of Section 22610.2 requires that the Secretary of State's Office include the

information required to be provided to registrants pursuant to Probate Code section 4802 either in the registration form or in material provided with the registration identification card that is required to be provided to registrants pursuant to Probate Code section 4800(d). This implements Probate Code section 4802.

2. NECESSITY.

Without the ability to prescribe the registration form, the Secretary of State's Office will be unable to obtain from registrants on a timely basis all of the information necessary to maintain the Registry and to provide access to authorized individuals as required by law.

The necessity of being able to obtain each of the items is set forth below:

- (1) The name and number of the form: **Necessary to differentiate from other agency and obsolete forms and help ensure that correct form is obtained and completed;**
- (2) The name and seal of the agency promulgating the form: **Necessary to identify form as the official form to be completed for registrations;**
- (3) Space for the Secretary of State's Office to record filing information and file number: **Necessary to facilitate processing by allowing for date-stamping of filing, file number and other information for filing and retrieval purposes;**
- (4) The statutory and regulatory citations for the program to which the form relates: **Necessary to identify proper form and to direct users to statutes and regulation for further reference;**
- (5) The fee for filing the form and any amendments or revocations involving the form or the written advance health care directive to which the form relates: **Necessary to avoid processing delays by helping to ensure that registrants provide the proper fees when filing the form;**
- (6) Instructions regarding the completion and filing of the form when registering, revoking or changing a written advance health care directive to which the form relates: **Necessary to facilitate completion of the form and to avoid processing delays by helping to ensure that registrants complete and file the form properly;**
- (7) The information required to be provided to registrants pursuant to Probate Code section 4802: **Necessary to implement Probate Code section 4802 which requires the Secretary of State to establish procedures to provide each registrant with specified information;**
- (8) The address where the completed form is to be filed: **Necessary to avoid filing delays by advising registrants where to file the form;**
- (9) Contact information to obtain information about obtaining, completing, or filing the form: **Necessary to facilitate the correct completion of the form and to avoid processing delays by advising registrants how to obtain additional forms and additional information regarding the form and its filing;**
- (10) Numbers, letters, lines or graphics that assist in understanding or completing the form: **Necessary to facilitate the correct completion of the form and to avoid processing delays by making the form and instructions more understandable to the registrant;**
- (11) Space for the person completing the form to indicate:

(A) Whether the form is a new registration, an amendment to a prior registration, a revocation of a prior registration or notification regarding an amendment to or revocation of a previously-filed written advance health care directive: **Necessary to facilitate processing so that the information can be properly filed and made available to authorized persons on a timely basis;**

(B) Whether the written advance health care directive or amendment to a previously-filed written advance health care directive is attached to the form or, in the alternative, whether the form provides notification of the intended place of deposit or safekeeping of a written advance health care directive or amendment to a written advance health care directive: **Necessary to facilitate processing so that the information can be properly filed and made available to authorized persons on a timely basis. This item is also necessary to allow for easy determination as to whether registrant has included all of the documents registrant intends to include;**

(C) The information specified in Probate Code section 4800(c), including name, social security number, driver's license number, or other individual identifying number established by law, if any, address, date and place of birth, the name and telephone number of the agent and any alternative agent: **Necessary to implement Probate Code section 4800(c) and to facilitate the providing of information to authorized persons on a timely basis;**

(D) Intended place of deposit or safekeeping of the written advance health care directive or amendment to the written advance health care directive to which the form relates, if applicable: **Necessary to implement Probate Code section 4800(c), which permits a registrant to indicate an intended place of deposit or safekeeping of a written advance health care directive;**

(E) The signature and printed name of the registrant: **Necessary to ensure that the purported registrant authorizes the registration and that the information is accurate. The printed name is necessary to facilitate processing of the registration and to determine the identity of the registrant for purposes of filing and release of information;**

(F) The date the form is signed by the registrant: **Necessary to assist in identifying the particular filing and its validity as compared to other filings of the registrant.**

(12) Any other information or material required or specifically authorized by statute or regulation to be included on the form: **Necessary to ensure that the form complies with other laws and regulations.**

3. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

In drafting the proposed regulation, staff considered the language of the statute (Probate Code sections 4800-4805) and the statute's legislative history (http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1857&sess=9394&house=B&author=senator_watson; http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_891&sess=9900&house=B&author=alquist; http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_2401-2450/ab_2445_bill_20040929_chaptered.html).

Secretary of State staff also reviewed the experience using other forms used by the Secretary of State with respect to programs in the office.

In addition, Secretary of State staff reviewed advance health care directive registry programs in the states of Arizona (http://www.azsos.gov/adv_dir/), Louisiana (<http://www.sos.louisiana.gov/pubs/pubs-index.htm#Programs>), Montana (<http://data.opi.state.mt.us/bills/2005/billhtml/HB0742.htm>, and <http://www.doj.state.mt.us/news/releases2005/04282005.asp>), North Carolina (<http://www.secretary.state.nc.us/ahcdr/>) and Vermont (<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT055.HTM> and <http://www.timesargus.com/apps/pbcs.dll/article?AID=/20050901/NEWS/509010334/1003/NEWS02>). (See, also, Vermont Department of Health study referenced below.)

Secretary of State staff reviewed programs established by U.S. Living Will Registry in New Jersey (<http://www.uslivingwillregistry.com/>) and Choices Bank in Montana (<http://www.choicesbank.org/>), both private organizations.

Secretary of State staff also reviewed a report prepared by the Vermont Department of Health, dated January 15, 2005 (<http://www.healthyvermonters.info/admin/pubs/AdvanceDirectiveRpt.pdf>), regarding similar registries.

Finally, Secretary of State staff reviewed reports of the California Law Revision Commission regarding laws concerning advance health care directives. (<http://clrc.ca.gov/pub/Printed-Reports/Pub201-HCDL.pdf>; <http://www.clrc.ca.gov/pub/Printed-Reports/Pub208-2000HCDL-PAL.pdf>; <http://www.clrc.ca.gov/pub/Printed-Reports/Pub209-2000-01Recs.pdf> .)

(Website addresses were current as of December 27, 2005.)

4. REASONABLE ALTERNATIVES TO THE REGULATION AND THE OFFICE'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives have been presented to or considered by the Office.

5. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL OR OTHER BUSINESSES.

The Office has not identified any adverse impact that the regulatory action would have on small business. To the extent that the regulatory action proposed may facilitate utilization of the Registry, health care providers and their patients may be benefited.

6. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

Facilitating utilization of the Registry will likely benefit health care providers and others. No adverse economic impact has been identified.

SECTION 22610.3. FEES.

1. SPECIFIC PURPOSE OF THE REGULATION.

Proposed regulation Section 22610.3 establishes the fee for registrations and clarifies that there shall be no fee for changes or revocations to either registrations or written advance health care directives filed with the Secretary of State.

2. NECESSITY.

This regulation is necessary for the Secretary of State's Office to implement Probate Code section 4800(f) that requires that registrants be charged fees.

3. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

In drafting this proposed regulation, Secretary of State staff considered the language of the statute requiring that a fee be charged to each registrant. Specifically, Probate Code section 4800(f), as amended by Statutes of 2004, Chapter 882 (AB 2445), provides: "The Secretary of State shall charge a fee to each registrant in an amount such that, when all fees charged to registrants are aggregated, the aggregated fees do not exceed the actual cost of establishing and maintaining the registry." [emphasis added]

In drafting this proposed regulation, Secretary of State staff considered a Fiscal Year 2005/06 Budget Change Proposal ("BCP") dated October 12, 2004, that was submitted to the Department of Finance. The BCP requested an additional \$37,000 from the Business Fees Fund and the establishment of a half-time Program Technician II position to implement the requirements of Statutes of 2004, Chapter 882 (AB 2445), relative to the Secretary of State's Advance Health Care Directive Registry. The BCP estimated 1,500 registrations during the fiscal year. Based on 1,500 registrations and the \$37,000 requested to maintain the Registry, the cost per registration was estimated to be \$24.67. Based on the statutory mandates, the fee charged registrants cannot exceed \$24.67, based on the number of filings expected (1,500) and the cost of the program (\$37,000). This \$24.67 per filing is derived by dividing the cost of the program by the number of anticipated registrations. The proposed regulation, which establishes a fee of \$10.00, is consistent with the statutory directive. It would not result in revenue exceeding the cost of the program.

The budget augmentation requested was included in the Budget Act of 2005 (Statutes of 2005, Chapter 38), with respect to the Secretary of State's Office budget.

In proposing a fee of \$10.00 for initial registrations and no fee for amendments and revocations, Secretary of State staff considered similar programs in or proposed in other states. For example, Secretary of State staff reviewed advance health care directive registry programs in the states of Arizona (http://www.azsos.gov/adv_dir/), Louisiana (<http://www.sos.louisiana.gov/pubs/pubs-index.htm#Programs>), Montana (<http://data.opi.state.mt.us/bills/2005/billhtml/HB0742.htm>), and <http://www.doj.state.mt.us/news/releases2005/04282005.asp>), North Carolina (<http://www.secretary.state.nc.us/ahcdr/>) and Vermont <http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT055.HTM> and <http://www.timesargus.com/apps/pbcs.dll/article?AID=/20050901/NEWS/509010334/1003/NEWS02>). (See, also, Vermont Department of Health study referenced below.)

Secretary of State staff reviewed programs established by U.S. Living Will Registry in New Jersey (<http://www.uslivingwillregistry.com/>) and Choices Bank in Montana (<http://www.choicesbank.org/>), both private organizations.

Secretary of State staff also reviewed a report prepared by the Vermont Department of Health, dated January 15, 2005 (<http://www.healthyvermonters.info/admin/pubs/AdvanceDirectiveRpt.pdf>), regarding similar registries. That review indicated that in most similar programs, from \$0 to \$20 is charged, with only the State of Louisiana charging more than \$10 per initial filing.

The recommendations contained in the report prepared by the Vermont Department of Health (<http://www.healthyvermonters.info/admin/pubs/AdvanceDirectiveRpt.pdf>), were particularly worthy of note in this regard. On Page 5 the report states, in part: "No registration fee: The committee believes that charging a fee to register an advance directive, even a nominal fee, may discourage use of the Registry and create two classes of people with advance directives: those who can afford to register and those who can't."

Finally, Secretary of State staff reviewed reports of the California Law Revision Commission regarding laws concerning advance health care directives. (<http://clrc.ca.gov/pub/Printed-Reports/Pub201-HCDL.pdf>; <http://www.clrc.ca.gov/pub/Printed-Reports/Pub208-2000HCDL-PAL.pdf>; <http://www.clrc.ca.gov/pub/Printed-Reports/Pub209-2000-01Recs.pdf> .)

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4. REASONABLE ALTERNATIVES TO THE REGULATION AND THE OFFICE'S REASONS FOR REJECTING THOSE ALTERNATIVES.

Alternatives might include charging registrants for changes or revocations, as well as initial registrations. However, such fees might discourage registrants from keeping their registration information current. Keeping the information in the Registry as current as possible is critical to facilitate utilization of the Registry and to avoid errors.

Another alternative may be a higher fee, but no more than \$24.67. However, as was indicated in the Vermont Department of Health study cited above, higher fees might discourage individuals from registering written health care directives with the Secretary of State's Office and would create two different classes based on financial means. This would be inconsistent with the legislative finding regarding an adult having the fundamental right to control the decisions relating to his or her own health care. (Probate Code section 4650) Higher fees would also be inconsistent with the fees charged for similar programs in other states, as referenced above. Therefore, the Secretary of State's Office believes that higher fees do not provide a reasonable alternative to the fee proposed.

5. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL OR OTHER BUSINESSES.

The Office has not identified any adverse impact that the regulatory action would have on small business. To the extent that the regulatory action proposed may facilitate utilization of the Registry, health care providers and their patients may be benefited.

6. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

Facilitating utilization of the Registry will likely benefit health care providers and others. No adverse economic impact has been identified.

SECTION 22610.4. REQUESTS FOR INFORMATION.

1. SPECIFIC PURPOSE OF THE REGULATION.

This proposed regulation sets forth the criteria for obtaining information from the Registry. The regulation provides that all requests for information must be entirely in writing and that the request must include:

- (1) Name, address and telephone number of the requestor,
- (2) Credible evidence establishing the identity of the requestor;
- (3) A statement establishing the authority of the requestor to receive the information;
- (4) The identity of the individual for whom information is requested;

(5) A statement setting forth the reason why the information is needed, as required by Probate Code section 4800(a).

2. NECESSITY.

The proposed regulation requiring that requests be in writing is necessary to establish a paper audit trail to help ensure compliance with the statutes and to minimize the risk of processing errors. The other requirements are necessary to ensure compliance with Probate Code sections 4800(a) and 4801. The necessity of obtaining each of the items indicated is set forth below:

- (1) Name, address and telephone number of the requestor: **Necessary in order to provide the requested information and to obtain clarification regarding the request should clarification be needed;**
- (2) Credible evidence establishing the identity of the requestor: **Necessary in order to implement Probate Code section 4801, which requires that the Secretary of State establish procedures to verify the identities of the persons authorized to access Registry information;**
- (3) A statement establishing the authority of the requestor to receive the information: **Necessary in order to help ensure that only authorized persons are provided with Registry information;**
- (4) The identity of the individual for whom information is requested: **Necessary in order to help ensure that persons requesting information receive only information they are authorized to receive;**
- (5) A statement setting forth the reason why the information is needed: **Necessary in order to implement Probate Code section 4800(a) which states: "A request for information. . .shall state the need for the information."**

3. TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

In drafting the proposed regulation, staff considered the language of the statute (Probate Code sections 4800-4805) and the statute's legislative history (http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1857&sess=9394&house=B&author=senator_watson; http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_891&sess=9900&house=B&author=alquist; http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_2401-2450/ab_2445_bill_20040929_chaptered.html).

In addition, Secretary of State staff reviewed advance health care directive registry programs in the states of Arizona (http://www.azsos.gov/adv_dir/), Louisiana (<http://www.sos.louisiana.gov/pubs/pubs-index.htm#Programs>), Montana (<http://data.opi.state.mt.us/bills/2005/billhtml/HB0742.htm>, and <http://www.doj.state.mt.us/news/releases2005/04282005.asp>), North Carolina (<http://www.secretary.state.nc.us/ahcdr/>) and Vermont (<http://www.leg.state.vt.us/docs/legdoc.cfm?URL=/docs/2006/acts/ACT055.HTM> and <http://www.timesargus.com/apps/pbcs.dll/article?AID=/20050901/NEWS/509010334/1003/NEWS02>). (See, also, Vermont Department of Health study referenced below.)

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4. REASONABLE ALTERNATIVES TO THE REGULATION AND THE OFFICE'S REASONS FOR REJECTING THOSE ALTERNATIVES.

There are no reasonable alternatives that have been identified by the Office or any interested party. Permitting the release of information based on an oral request is not considered to be a reasonable alternative to requiring that requests be in writing.

5. REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL OR OTHER BUSINESSES.

The Office has not identified any adverse impact that the regulatory action would have on small business. To the extent that the regulatory action proposed may facilitate utilization of the Registry, health care providers and their patients may be benefited.

6. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

Facilitating utilization of the Registry will likely benefit health care providers and other persons involved with businesses. No adverse economic impact has been identified.